

DD/A 79-0534/4

10 September 1979

MEMORANDUM FOR: Director of Personnel

FROM : Clifford D. May, Jr.
Acting Deputy Director for Administration

SUBJECT : Comments Regarding Senior Intelligence Service
Proposal

REFERENCE : Memo frm D/Pers to DD/A, dtd 6 Sept 79,
Subj: Changes to the Senior Intelligence
Service Proposal

1. In response to your request for comments regarding the Senior Intelligence Service (SIS) proposal, I believe the following items should be reviewed or clarified prior to implementation.

a. How will those supergrade employees in a PRA status be handled?

It would appear that they would virtually be eliminated from consideration for an award or stipend since they would not be in a position evaluated at the GS-16 level. This should not always be the case and perhaps this topic should be specifically addressed.

b. It is indicated that current supergrades have the option of either joining or not joining the SIS. The question is what will happen to those individuals who decide not to join the SIS. How will they be ranked, appraised, etc.

c. In the M Career Sub-group there are a number of individuals who are assigned to M positions in other Directorates, probably a greater number than other Sub-group supergrades assigned to the DDA. In view of this, we foresee a problem with the "M's" having to compete for the awards within the Directorate to which they are assigned.

Perhaps there could be a dual policy wherein worthy individuals could be recommended for monetary awards by either the operating component to which they are assigned or by the Career Service of which they are a member.

d. On Page 19, it is stated "that officers... will be converted to an appropriate SIS annual pay rate which is at least equal to their annual salary rate payable on the date immediately prior to the implementation of the SIS." If the implementation date is to be 1 October 1979 as is proposed, it appears that these individuals will be penalized by not receiving the benefits of any pay raise that might go into effect on 7 October 1979. Accordingly, I recommend that the salary scale be modified to correct this situation as appropriate.

e. Sub-System 7 refers to the Senior Intelligence Officer Development Program. I believe this Section needs expansion to clarify how this program will tie into or replace the current PDP and how the "feeder groups" will be identified and trained.

f. I recognize that there may be a number of issues that may develop on the structure and procedures described in your proposals and that additional time may be needed to resolve these issues. However, it seems to me we can implement the new system on 1 October 1979 if we can:

(1) Agree that an SIS should be implemented in CIA;

(2) Agree on the scope of the system (whether or not all supergrades are included); and

(3) Agree to prepare Annual Work Plans shortly after 1 October. These actions will provide a framework for performance evaluation while the remaining procedures and issues are being resolved. This will ensure that deserving executives will be eligible for performance awards in early FY-81

2. While there are other specific details and procedures that must be worked out as the program progresses, I believe the overall proposal is well conceived and necessary if we are to attract and retain highly qualified senior executives in the CIA.

STATINTL

Approved For Release 2002/01/08 : CIA-RDP89-01114R000300090036-6

NFAC

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MEMORANDUM F

Director of Personnel

4961-79/1

I have reviewed the 14 September changes to the basic proposal for the Senior Executive Service. I have one objection to the changes -- to be found on page 37. It concerns the limitation that "an officer awarded either a Meritorious or Distinguished Officer rank-stipend shall not be eligible to be awarded that same rank during the following four fiscal years." I feel that "four" years is too long a period and should be reduced at the most to one year.

STATINTL

[Redacted]
John J. Hicks
DD/NFAC

Date 18 Sept 79

FORM 5-75 101 USE PREVIOUS EDITIONS

Approved For Release 2002/01/08 : CIA-RDP89-01114R000300090036-6

DDO

Approved For Release 2002/01/08 : CIA-RDP89-01114R000300090036-6

18 September 1979

MEMORANDUM FOR: Director of Personnel

FROM: John N. McMahon
Deputy Director for Operations

SUBJECT: Senior Intelligence Service - Basic Proposals

Comments:

1. Re page 12, item 5, it would appear from the wording of paragraph 5 that the Director of Personnel will submit "prioritized" recommendations to the DDCI for approval. I really don't believe that that is really what is intended and that point should be made clear.

2. It is essential that we make the conversions according to the conversion table on page 26 and not according to the narrative on page 22. I feel it is necessary that Directorates retain the flexibility to place and change supergrade positions. This is particularly true of the DDO overseas when the dynamics of crises situations demand it.

3. I am worried about the developmental plan which is now proposed because it implies that promotion to the SIS level requires certain criteria to be met; that is, having an employee get the proper tickets punched by rotating through many directorates. While this is admirable for a handful of people, if it becomes the norm or the basis for promotion, we will populate the Agency with a host of managers who have little or no substantive knowledge. I wish to reiterate that I am strongly opposed to any plan or personnel program which does not make the thrust of its endeavor the career development of specialists and experts who form the core of the Agency's knowledge.

STATINTL

John N. McMahon

UNCLASSIFIED INTERNAL Approved For Release 2002/01/08 : CIA-RDP89-01114R000300090036-6

SECRET

ROUTING AND RECORD SHEET

SUBJECT: (Optional) Changes to the Senior Intelligence Service
Proposal

FROM: DDO	EXTENSION	NO.		DATE	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
		RECEIVED	FORWARDED		
1. D/Pers FX-2				7 SEP 1979	
2.					
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IMMEDIATE

Form 3-65 160c

(13)

Approved For Release 2002/01/08 : CIA-RDP89-01114R000300090036-6

DD/O 79-43501

RS 19-5552

7 SEP 1979

MEMORANDUM FOR: Director of Personnel
FROM : John N. McMahon
SUBJECT : Deputy Director for Operations
Changes to the Senior Intelligence Service
Proposal
REFERENCE : D/Pers Memorandum dtd. 6 September 1979,
same subject

1. The proposed changes are satisfactory -- with one exception. In pressing for a Deputy Director's right to recommend awards for officers serving in his directorate, but not from his career service, I did not intend for this to be exclusive. In other words, I believe that a Deputy Director should have the option to either make such a recommendation on his own or to forward it to the appropriate career service head for his action.

2. With additional time to review the SIS proposal, we have discovered what could be serious problems with the initial conversion system. The position conversion table (page 26) is sensible and will coincide quite well with the senior management needs of the Operations Directorate. The incumbent conversion table (page 51) is another matter. I recognize that it was designed to preclude salary loss and this is commendable. However, the immediate result for us would be serious imbalances in the numbers of senior officers versus the numbers of senior positions at the various levels. Our grade structures would become an elongated diamond resting on top of the normal pyramid -- greatly complicating management of headroom and "flow-through." We must attempt to find a system which maintains the pyramid structure and which does not involve splitting current GS grades among the SIS levels. (If there proves to be no legal alternative to grade splitting, it should not be done just on the basis of current step and "salary.")

[REDACTED] STATINTL

FTR

John N. McMahon

I would strongly urge that
we take a little more time
to think this through!

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DDSGT

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DDS&T-4773-79

18 September 1979

MEMORANDUM FOR: Director of Personnel
FROM: Leslie C. Dirks
Deputy Director for Science and Technology
SUBJECT: Senior Executive Service
REFERENCE: Basic Proposals Senior Executive Service
Revised 14 September 1979

1. I have reviewed the most recent version of the proposal for a CIA Senior Executive Service (reference) and find one major deficiency. It is my recollection that the Executive Committee agreed to substantial changes in the way performance awards were to be determined, and yet the revised proposal (pp 40-45) reflects only the most modest differences. Specifically, it is my understanding that the DCI/DDCI, in consultation with the DD's, will allot bonus pool dollars to each directorate on the basis of their perception of the quality of the overall performance of that directorate, and that the Deputy Director in consultation with the DDCI in turn will further divide this sum among the offices (divisions) of his directorate in accord with his views of the offices' respective levels of achievement. Each Office Director will then identify the 50 percent (more or less depending on DDCI and DD allocations in any given year) of his SIS cadre to receive awards and determine how much each is to receive subject to the total amount available. (A/IUO)

2. The office (or division) bonus determinations are subject to review and approval by the head of the career service concerned and final approval by the DDCI/DCI. SRB's will be concerned with promotions to the SIS 1, 2, and 3 levels and the career development program both within the SIS 1, 2, and 3 levels and the GS-15 "feeder group." The Office of Personnel

SUBJECT: Senior Executive Service

will provide staff support on matters concerning the SIS both to the DDCI and to the agency level Senior Resources Board. I still have residual concerns about SPS positions. These concerns are described in the attachment. (A/IUO)

3. Since my understanding of the DDCI's decisions, reached as a result of the last Executive Committee meeting, on the SIS structure were crucial to setting aside most of my reservations on the SIS structure as proposed by the Office of Personnel SIS Task Force, I would appreciate it if you would let me know immediately if I have misunderstood the sense of the Executive Committee discussions and the DDCI's decisions. (A/IUO)

[REDACTED] STATINTL

[REDACTED]
Leslie C. Dirks

Attachment: a/s

SPS ISSUE

In the SIS structure as presently proposed, the current independent SPS structure disappears and all SPS personnel now in the DDS&T, NFAC and DDA will be folded into the SIS in a way identical to current supergrade personnel. It is clear that an acceptable SIS structure must offer the same benefits both for the current supergrade and SPS personnel, but at the same time we should preserve as much flexibility as possible in our ability to hire and promote exceptionally well qualified technical personnel which we have profited from under the current SPS system. Although OMB has set an upper limit of [redacted] on the number of SPS personnel we can have on board, we currently have, among the DDS&T, NFAC and DDA, only [redacted] SPS positions on the T/O, and even fewer incumbents. Thus this ceiling has never been a problem. But now the SG and SPS ceilings will be combined into a common SIS ceiling. Under the new system, it is conceivable that pressures to promote non-SPS types of personnel, long thwarted by the troublesome supergrade encumbrance ceiling, could result in a spate of promotions thus consuming the additional headroom brought into the SIS from the SPS system. If this were to occur, it could become very difficult to fill key senior technical positions, formerly rated at SPS levels, with SIS personnel either hired from the outside or promoted from within. Perhaps the best way to deal with this potential problem is to monitor very closely promotions and lateral entries into the SIS ranks to make sure that some ceiling allocation can always be made available for our critical senior technical personnel.

Attachment to:
DDS&T-4773-79

DDS&T-4602-79

10 September 1979

MEMORANDUM FOR: Director of Personnel
FROM: Leslie C. Dirks
Deputy Director for Science and Technology
SUBJECT: CIA Senior Executive Service
REFERENCE: Your Memo dtd 6 Sept 1979
Subj: Changes to the Senior
Intelligence Service Proposal

1. I have reviewed the revised version of your working group's basic proposals for a CIA Senior Executive Service and would like to offer my comments on it. (U)
2. In general, I fully support the concept of a Senior Intelligence Service for CIA open to all current officers at or above the rank of GS-16, and I agree that it should be modeled to some extent after the Senior Executive Service currently being implemented elsewhere in the Government. I am concerned, however, that we may be trying to define and implement a system for CIA too hastily without full consideration of the possible pitfalls. On this score, I have been told that implementation of the Senior Executive Service under OPM auspices is not going smoothly -- that it is taking on highly political overtones and that other unintended effects are surfacing. (A/IUO)
3. It would seem preferable to me for the Agency to issue shortly a notice of intent to establish a Senior Intelligence Service including an outline of its proposed structure and a commitment to furnish additional necessary details around 1 November at which time current supergraders would be asked

DDS&T-4602-79

SUBJECT: CIA Senior Executive Service

to declare their intentions with respect to joining the SIS. In theory, the revised performance appraisal system will already be in effect on 1 November, and the performance awards and rank bonuses can still be distributed 11 months later. The additional month's time should permit us to look a bit more carefully, and I would think profitably, at the system we wish to implement.

4. In my view, there are some features of the SIS currently proposed which indeed require further study and discussion. For example, I feel we should look more carefully at how we will deal with our SPS specialists. As you know, our SPS officers currently are not subject to the same encumbrance ceiling imposed on our supergraders. The present proposal would place both the supergrade and SPS officers under one ceiling for the first time. Including SPS officers in this single ceiling could make it quite difficult to hire highly technical specialists at SPS rank from private industry on those frequent occasions when the directorate has reached its supergrade ceiling. Regarding this ceiling, I disagree strongly with the statement on page 21 of the reference which claims that our current ceiling is "adequate." At present, DDS&T has [redacted] supergrade positions approved by PMCD on the T/O which the ceiling allocation will not allow to be filled with supergrade personnel. Including our SPS specialists in the SIS without differentiation from the supergrade managers would also force them to be competitively ranked against supergrade managers for performance awards. This could turn out to be a very difficult task. (U)

5. I am also concerned about the possible adverse morale aspect of the 50% limitation on performance awards. My senior managers and I tend to think it would be far less harmful to morale to reduce the size of the group receiving absolutely no award to, say, 10% or 20% of the SIS cadre, not a full 50%. We feel there are very few "average" or mediocre supergrade and SPS personnel in CIA in the absolute sense, and to summarily exclude some good, solid performers from at least a token award at, say, the 35th percentile of performance is very questionable. Perhaps awards on the order of 4% or 5% of base pay should be made available to the 20th or 50th percentile performers. While recognizing this may cause other problems, I think it would be worth considering. (U)

DDS&T-4602-79

SUBJECT: CIA Senior Executive Service

6. The extent to which we consciously tailor the performance award structure to compensate for grade compression also seems worthy of further study. Perhaps we would want to establish guidelines recognizing that under normal circumstances, higher fractions of the more senior SISers would be expected to receive performance awards given that their base pay does not properly reflect their level of responsibility. This will be particularly important if Congress does not increase the pay scale.

7. I think we should reexamine the proposed process for interleaving the career services' individual recommendations for performance awards into a master prioritized list. It may be preferable to simply agree that a fixed percentage of SIS members in each career service will be eligible for performance awards at the ES-1, 2 and 3 levels, and leave it to the individual career services to identify them. This arrangement would not impact on the DDCI establishing directorate bonus allocations on an annual basis based on his judgmental overall directorate performance.

8. Lastly I am convinced that the successful implementation of a bonus system will require a carefully thought through structured approach. There is much potential for abuse and disputes arising from the members of the Senior Executive Service if firm and clear ground rules for administering these large amounts of money are not defined. Of particular importance are the guidelines for allocating bonuses to the various executive scale levels. As mentioned above, some tailoring of this nature might be intended as a partial conversation for the current distorted pay scale situation, but in addition there is some merit in allocating bonuses proportionate to the levels of responsibility. As you may recall this tailoring was characteristic of the bonus incentive systems of the three companies who met with the Executive Committee in July. While some details can be left for subsequent definition, this matter is of fundamental importance and will have a major impact on the decision of senior officers to join the SIS or elect the retirement option which is available to many of our senior supergrade officers. This and other matters are particularly important for early resolution given the difficulties apparently already being encountered by other government agencies in implementation of the SES.

DDS&T-4602-79

SUBJECT: CIA Senior Executive Service

9. This discussion of my concerns was not meant to be exhaustive, but only representative. I offer it primarily as evidence of a need to avoid rushing unnecessarily forward with a senior intelligence service that is not fully thought out. I am hopeful that we will have the time required to discuss this matter more fully, and I look forward to such discussion.(U)

[REDACTED] STATINTL

Leslie C. Dirks

cc: DDCI
DDO
DDA
D/NFAC

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RMS

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DCI/RM-79-0049
September 18, 1979

MEMORANDUM FOR: Director of Personnel
STATINTL FROM: [REDACTED] Deputy to the DCI for Resource Management
STATINTL [REDACTED] Deputy to the DCI for Collection Tasking
SUBJECT: Senior Executive Service

1. We have reviewed the corrections to the Senior Intelligence Service proposals that are contained in your draft dated 14 September. Attached are our annotations to that draft. Essentially we eliminated references to "the Agency" when provisions are to apply to both CIA and ICS. In a few instances we caught oversights that you have probably already noted. In addition to these changes, we would like the final document, which Mr. Carlucci will be asked to approve, to include the paragraph under "Fundamental Proposals" which now appears in the foreword to the effect that the policies and procedures of the Senior Intelligence Service will be fully applicable to all organizational elements of both the Central Intelligence Agency and the Intelligence Community Staff, with each managed and administered under separate but parallel systems.

2. We understand you will be discussing the final draft with Mr. Carlucci this afternoon. If you have any questions about STATINTL our recommended changes, please feel free to contact either one of us.

STATINTL [REDACTED]

SUBJECT: Senior Executive Service

Distribution:

Original - Addressee
1 - D/DCI/RM Chrono
1 - D/DCI/CT Chrono
1 - RM Registry
1 - CT Registry

STATINTL D/DCI/RM/[REDACTED]:pbj, [REDACTED] (18 Sept. 1979)

79-5402. 100

DCI/RM-79-2920
10 September 1979

MEMORANDUM FOR: Director of Personnel

STATINTL

FROM: [REDACTED]
Deputy to the DCI for Resource Management

STATINTL

[REDACTED]
Deputy to the DCI for Collection Tasking

SUBJECT: Senior Executive Service

1. We have reviewed the revised "Basic Proposals CIA Senior Executive Service" that we received on 6 September 1979, and have the following comments. These comments address both the overall proposals and the need for the Intelligence Community Staff (RMS and CTS) to be covered under the provisions of a DCI approved Senior Executive Service.
2. As stated in the Foreward of the Proposals, the policies and provisions of the DCI's SES would apply to both the CIA and the IC Staff with each being managed and administered under separate but parallel systems. To accomplish this simply and to avoid confusion in the future, we believe the whole system should be titled the "DCI's Senior Intelligence Service" (page 3). This title would demonstrate that the ICS-SIS as well as the CIA-SIS, clearly flowed from the DCI's authority to establish an SES.
3. In order to define the scope of coverage, and the separate but parallel systems under which CIA and the IC Staff will operate, a new subparagraph D should be added in "Fundamental Proposals; Section F". This subparagraph would include the following statement, made in the Foreward in the approval sections as well.

D. Scope and Administration of a Senior Intelligence Service
Proposal: The policies and procedures of the DCI's Senior Intelligence Service will be fully applicable to all organizational elements of both the Central Intelligence Agency and the Intelligence Community Staff with each managed and administered under separate but parallel systems.
4. As a consequence of changing the name of the system to the DCI's SIS, the language of the proposals would have to be reviewed for syntax. Most of the proposals could refer simply to SIS with

the understanding that the content referred to both the CIA and ICS except as specifically noted.

5. The Management Structure detailed in Sub-System does not include ICS participation in the PRC, and it has been amended to delete ICS participation in the O/DDCI Senior Resources Board. This is in consonance with the ICS maintaining a separate system. In order to establish comparable review groups the following statement should be added as paragraph E.

E. The ICS will establish a Performance Review Board (PRB) to make recommendations to the DDCI on SIS-1 to SIS-4 personnel. The Board will be chaired by the DCI's Director of Personnel and will consist of appropriate representatives from RMS and CTS.

With the inclusion of the above statement in the Management Structure as a separate paragraph, the reference to ICS participation in a separate Senior Resources Board may be deleted, since the PRB will serve this function for the ICS.

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CTS

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COMPT

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18 SEP 1979

MEMORANDUM FOR: Director of Personnel

FROM : James H. Taylor
Comptroller

SUBJECT : Comments on the Senior Intelligence Service
(REVISED Draft, 14 September 1979)

REFERENCE : Your Routing Sheet Note of 14 September 1979

1. As you requested, I have reviewed the Basic Proposal for the Senior Intelligence Service as Revised 14 September 1979.

2. I have only one conceptual concern with the most recent draft. In my reading of the procedure for handling performance awards (and Meritorious and Distinguished Executive awards) endorsed by the Senior Resources Boards, I don't believe the sense of the decision made by the Executive Committee (at its meeting on 11 September 1979) has been captured. The Committee did not intend that the Director of Personnel or the SIS Support Staff do any winnowing or integrating of the award recommendations made by the Boards. It is my recollection that the Committee intended that this be a command rather than a staff function. Specifically, the DCI/DDCI decided to use a quota system. The DCI/DDCI, in consultation with the Deputy Directors (or possibly the SISAS as such), will allocate the number of awards to each directorate based on the performance of that directorate against stated goals. Each Deputy Director, in turn, will distribute his allocation among his offices/divisions. Thus, no Agencywide prioritized list is needed. I believe it was the consensus that the prioritized lists of recommendations prepared by the Senior Resources Boards and endorsed by the Deputy Directors would be the basis on which recommendations ultimately would be submitted to the DCI/DDCI for final approval. It was my understanding that the Director of Personnel's role in this procedure is to review the line decisions for possible inequities, such as for example biases against people on rotational assignments, and for adherence to prescribed procedures. I believe these concepts need to be incorporated in the SIS revised draft and that the responsibility of the Director of Personnel (SIS Support Staff) for providing staff support as now outlined on pages 44-46 modified accordingly.

3. One other area is of minor concern. In my view, the last two action responsibilities outlined for the Senior Resources Boards (pages 15-16) are more properly the responsibility of the existing Career Service Panel/Board structure. While the membership of the Senior Resources Boards and the Career Service Panels/Boards may be the same, I believe the distinction here is important. I suggest the two subparagraphs be deleted from the SIS proposal -- or at least the point should be made clearly that the existing Career Service structure will handle both comparative value rankings and competitive merit promotion exercises.

4. We also have noted a number of minor technical/editorial changes which we believe should be made before the proposal is submitted to the DCI/DDCI for final approval. We have given our suggested changes directly to your staff.

STATINTL

[REDACTED]
James H. Taylor

10 SEP 1979

MEMORANDUM FOR: Director of Personnel

FROM : James H. Taylor
Comptroller

SUBJECT : Comments on the Revised Senior Intelligence Service (U)

REFERENCE : Memo to Multi frm D/Pers dtd 6 Sept 1979, Subj:
Changes to the Senior Intelligence Service Proposal (U)

The following are my concerns about the draft proposal as revised:

1. The paper does not adequately separate the promotion process from the performance review process nor does it yet totally reflect the decision I believe we made in the first EXCOM to carry out the performance review function within an organizational and not a career service context. This point could be covered by making very explicit somewhere early in the paper that performance review will be an organizational responsibility, that promotion review and executive development will be a career service responsibility, the reasons for this distinction, and the safeguards built in. The distinction should be carefully and explicitly maintained throughout the paper. There are still, for example, references to career service responsibilities for performance review rather than directorate responsibilities (see paragraph 2 on page 13 for an example). (U)

2. I think it is important to make it clear that the DDCI may (indeed probably should) allocate awards on other than a pro rata basis among the directorates. On page 12 it is noted that the Director of Personnel in collaboration with the Comptroller will determine the "monetary resources available for performance awards and 'rank' stipends and ... guidelines for their distribution to the major components of the Agency." I agree there should be guidelines, but we should also propose alternative distributions to the DDCI for decision and make a recommendation as to the kind of process which should underlie such alternative recommendations, probably based on his goals program. In all three of the presentations

by corporate people on this subject, it was clear that in the corporate world two decisions are made before the performance award system is carried to its natural conclusion. First, a decision is made as to whether the corporation did well enough to justify any awards in a given year, and if yes, how many (much). Second, a decision is made as to how the money agreed to will be divided within the organization before individual awards are divided. I think the law suggests how the first decision will be made by us. But the DDCI clearly has an option with respect to the second. He might, for example, decide 13 months from now that NFAC or DDA had in fact made a disproportionately high (or low) contribution to our general performance and reward them accordingly--perhaps adding 5 percent or 10 percent of the "kitty" (beyond its pro rata share) to one directorate or independent office at the expense of others. This approach would require the DDCI to enter into a dialogue with the deputies at the beginning of the year as to what he expects from their organizations. This could put some life into our goals system and profoundly and favorably affect the conduct of the whole review process. It would also add an emphasis on "team performance" to our system. In any event, the paper should be more explicit as to what we are considering here. (U)

3. A key problem with our implementation of the SIS system will be the very natural pressure on us to spread the "wealth" around. To be more specific, given the pay compression we are likely to be faced with over the next few years, it will be surprising to me if we do not discover after two to three years that the system operates to give Joe a performance award this year and Frank one next year--despite merit. There is an evident need for policy guidance here and for very close central monitoring. I believe the DDCI should make explicit now his concern about this problem and that we should consider what that policy guidance---at least broadly--is going to look like and how it will be monitored. I think our political position is weak without such an effort. More importantly, pressures for equity, particularly given the salary compression which seems to be a fact of life, are likely to overtake our pursuit of excellence. Instead of rewarding performance, we may end up compensating for Pay Act compression. I would think this also could be a function of the support staff you have provided for. (U)

4. The section on management structure, pages 11 through 17, remains confusing to me. If I read the section correctly (and I am not at all sure that I do), we have a policy review committee consisting of the four Associate Deputy Directors, the

Chairman of the E Career Service, and the Director of Personnel reviewing and making recommendations to the DDCI for approval. But some of the recommendations are those which their bosses, the Deputy Directors and the DDCI, have previously approved-- either acting as the Office of the DDCI Senior Resources Board or acting within their directorate responsibilities. Perhaps there are reasons why this makes sense, but if there are, they remain elusive. There is, however, a more fundamental point: why is the PRC required? What will it do? The DDCI will make a decision to allocate the funds available on either a pro rata basis or merit basis. Each organization will have submitted a prioritized list of recommendations. The functions which remain to be done: examining the recommended lists for signs of systematic bias for or against certain groups of people or for indications that time in grade or loyalty are being rewarded at the expense of performance, for example, would be better accomplished by the small staff unit described elsewhere. It might well be desirable to have a meeting of the interested parties to discuss issues or the staff's recommendations, but I see little value in assigning any formal responsibility to a Committee which cannot, in my view, serve a useful purpose. (U)

5. I think there should be a section in the paper outlining the decision the DDCI has already made on the issue of confidentiality, making explicit our present policy in this regard. (U)

6. The proposed system rests heavily upon the Annual Work Plans proposed by supervisors. The employee's perception of whether or not he is getting a fair shake, his desire to participate in the system, and the ability of managers at all levels to review reasonably uniform performance appraisal reports--all rest on the quality of this effort. There is very little discussion in the paper of the Annual Work Plan. I have seen your proposed revised performance appraisal package and agree that it is an adequate point of departure. I would not propose that we reopen discussion of that. But I would suggest that we need to try to build into the process some way of insuring that the Annual Work Plan itself will be carefully developed by all supervisors responsible for doing so. Possibly this could be done by providing that the attention supervisors give to the development of Advanced Work Plans for their employees will be explicitly considered as their performance appraisals are prepared. (U)

7. Finally, despite my concerns above, I remain convinced that we can in fact get this program under way by 1 October or shortly thereafter. Speaking as an employee, there are a limited number

of basic points which I must understand in order to decide whether or not I want to participate in the program. These key points include: what is the Annual Work Plan going to be like; how are the rewards going to be recommended and approved (in broad terms); and what are the rewards and penalties associated with my participation? Most remaining administrative details as to the exact nature of the review process can wait until the end of the calendar year to be resolved. (U)

[REDACTED] STATINTL

[REDACTED]
James H. Taylor

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D/EEO

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EEO 79-268
10 September 1979

MEMORANDUM FOR: Director of Personnel

FROM : Omego J. C. Ware, Jr.
Director, Equal Employment Opportunity

SUBJECT : Senior Intelligence Service Proposal

REFERENCE : Your memorandum dated 6 September 1979;
Same Subject

I conclude from reviewing this revised version of the draft SIS plan that it presents a reasonable basis to begin implementation. My major reservation centers on two considerations. The first, is the obligation to integrate the requirement of Affirmative Action into the complexities of our "SIS" system. The second is to assure, before a finding of adverse action, that the varied direct and indirect "selection" procedures of the SIS are "valid." I propose that these ends may be addressed by two changes.

- a. The Director EEO of the CIA and Agency Ombudsman be added to the Performance Review Committee (PRC).
- b. The Directorate EEO Officers be made members of the Directorate Level Senior Resources STATINTL Boards.

[Redacted]
Omego J. C. Ware, Jr. *[Signature]*

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ADMINISTRATIVE-INTERNAL USE ONLY

INSPECTOR GENERAL
79-0859

7 SEP
1979

MEMORANDUM FOR: Director of Personnel

FROM: John H. Waller
Inspector General

SUBJECT: Comments re Senior Intelligence Service Proposal

REFERENCE: D/Pers memorandum dated 6 September 1979
entitled "Changes to the Senior Intelligence
Service Proposal"

1. The referenced memorandum requested comments by COB 7 September on the "Basic Proposals--CIA Senior Executive Service," dated 28 August 1979. Paragraph 4 contains my recommendation for change to the text of Sub-Section 8, Adverse and Other Administrative Actions, of the Basic Proposals.

STATINTL
2. Subparagraph (c) on page 66 of the Basic Proposals deals with grievances which may arise as a result of actions growing out of the SIS Performance Appraisal System. I have attached a version of page 66 which I recommend as a replacement for the current version. The material which I have deleted on the attachment appears to be an attempt to summarize the procedures outlined in HR [REDACTED]. However, HR [REDACTED] provides for advice and guidance by STATINTL the Director of Personnel, direct appeal to the DCI and the Inspector General, and a review by a DCI Grievance Board, none of which are mentioned in the current version of subparagraph (c). Rather than add these provisions and the necessary explanation they would entail to subparagraph (c), I believe subparagraph (c) should end, as I have indicated, with the general statement, "The basic rules set forth in Agency Headquarters Regulation [REDACTED] on STATINTL Grievance Systems generally apply."

3. I wish also to point out that HR [REDACTED] describes certain STATINTL exclusions of matters which are not grievable. Among these is "any judgment of a Personnel Evaluation Board or Panel in ranking

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or selecting employees for promotion on the basis of merit, unless the grievant can demonstrate with clear and convincing evidence that the record under consideration was significantly deficient . . ." The effect of this exclusion on potential grievances resulting from the procedures of the SIS Performance Appraisal System is not, as yet, clear to me. I tend to a rather strict interpretation of its applicability to the SIS System: i.e., to the position that most cases of dissatisfaction with ranking decisions under the SIS Performance Appraisal System will not be grievable. However, this is a matter that should be discussed by the Executive Committee.

4. In view of the above, I recommend that the change indicated on the attached copy of page 66 be adopted for subparagraph (c) on grievances.

[REDACTED] STATINTL

John H. Waller

Attachment:
As stated

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Attachment

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- (c) Grievances can take a number of forms such as dissatisfaction with performance ratings, with not receiving performance awards, with not receiving high enough performance awards or with remedial, probationary or removal decisions. The basic rules set forth in Agency Headquarters Regulation ■■■ on Grievance STATINTL Systems generally apply, namely:
- ° SIS members are expected to seek resolutions to grievances — informally within their Career Services (or Directorates) — through consultations with supervisors or other officials.
 - When their grievances relate to actions taken within the jurisdiction of other Career Service (or Directorate) components, they may likewise consult those component officials.
 - If not satisfied with the outcome of discussions at the Career Service (or Directorate) level, SIS members may appeal — to the DDCI whose decisions will be final.

COMMENTARY

More detailed procedures will need to be developed if the above general ones are approved in order that actions described can be taken fairly, quickly and in the best interest of both the SIS member and the Agency.

The above proposals are:

APPROVED DISAPPROVED

Deputy Director of Central Intelligence

Date

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OFFICIAL ROUTING SLIP

TO	NAME AND ADDRESS		DATE	INITIALS
1	Mr. Harry Fitzwater Director of Personnel			
2				
3				
4				
5				
6				
	ACTION	DIRECT REPLY	PREPARE REPLY	
	APPROVAL	DISPATCH	RECOMMENDATION	
	COMMENT	FILE	RETURN	
	CONCURRENCE	INFORMATION	SIGNATURE	

Remarks:

FOLD HERE TO RETURN TO SENDER

FROM: NAME, ADDRESS AND PHONE NO.

DATE

Inspector General

10 Sept 79

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79-0862

10 September 1979

MEMORANDUM FOR: Mr. Harry Fitzwater
Director of Personnel

FROM: John H. Waller
Inspector General

SUBJECT: Basic Proposals CIA Senior Executive
Service Changes Dated 6 September 1979

1. I am concerned that inspectors, whose effectiveness rests on their independence of judgement and immunity from implied pressure, will be subject to the Performance Review Committee for any merit awards or rank stipends. This poses the fear that inspectors may perceive retaliation -- active or subliminal -- by certain PRC members whose components had been criticized by the results of the inspector's survey.

2. I recognize it is difficult to design an alternative system without making the DDCI himself responsible for determining merit awards and stipends for inspectors in competition with all others. Perhaps PRC members whose components had been inspected by the particular inspector under review could disqualify themselves from passing judgement or voting in such a case. But over a period of time, it is possible that an individual inspector's candidacy for award could be reviewed by more than one PRC member, making the disqualification technique unrealistic. At any rate, I urge you to consider this problem which may apply as well to OGC officers.

STATINTL

[REDACTED]
John H. Waller

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GC

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OGC 79-08218

10 September 1979

MEMORANDUM FOR: Director of Personnel

STATINTL

FROM:

[REDACTED]
Deputy General Counsel

SUBJECT:

Comments on Changes to the Senior
Intelligence Service Proposal

1. In addition to comments on the changes to the basic proposals arising out of the Executive Committee meeting on Thursday, 30 August, there is one part of the management structure in the basic proposals for the Senior Intelligence Service which we should have commented on at the first Executive Committee meeting, but did not because we had not had time before the meeting to carefully review the proposals and focus on the potential effect of this particular one.
2. The system for evaluating members of the SIS and recommending them for performance awards creates a potential threat to the independence of those officials of the Agency and the supergrade members of their offices who are responsible for policing the activities of the various Agency components. While the DCI/DDCI will administer directly the program for SIS 5 and 6 level officers, those at lower levels of the SIS will have their performance evaluated by a board or committee composed of heads and associate heads of components whose activities they police. It is inevitable that in carrying out their responsibilities they will, from time to time, cause resentment or worse in directorates and offices whose activities they must inspect, adjudicate and report on. It is not suggested that board and committee members would reflect in their rankings and award recommendations resentment of or disagreement with the way these independent office members carried out their duties, nor that members of these offices would pull their punches in order to avoid disfavor, but nevertheless the potential for and appearance of this impingement upon independence exists.

Such a system is inconsistent with the responsibility and authority that has been granted to certain officials, particularly the Inspector General and General Counsel, and to the many recommendations, including those of the Church Committee that these officials have unquestioned independence.

3. While the need for independence of reviewing officials is most evident in the cases of the Inspector General and the General Counsel, there may be others in the Agency, particularly, but not only, in the DCI's Directorate, whose functions could be impaired or be seen to be impaired by a system which would grant awards based upon the evaluation of those whom they are required to police. Accordingly, we recommend that the performance management program for all members of the SIS in the Office of the Inspector General and General Counsel and such other members as the DCI or DDCI shall designate be administered directly by the DCI/DDCI.

4. Additional comments on changes and specific sections:

Page 3, paragraph 1(c) - The correct title 50 section citation is 403a-403j.

Page 5, Commentary, first paragraph - This paragraph is unclear. It seems that the first sentence should end after the words "managerial personnel". The remainder of the paragraph should then be rephrased to indicate that positions of senior non-managerial specialist/analyst personnel and positions of those opting out of SES will remain under the current supergrade system.

Page 8, Section II, 1 f - This subparagraph should be deleted. It is not a purpose of the SIS and it is implicit in subparagraph a.

Page 9, subparagraph e - Add at the end of the paragraph ..."except as they may be valid security considerations". There may be circumstances, particularly in hiring from outside the Agency, where one of these factors would be a valid security consideration, but where a disqualification on the basis of it could be challenged based on our own

regulation if we did not have a security disclaimer. For example, a member of the Communist party might argue that our own rules did not permit considering his political affiliation. An alcoholic could argue that he had a mere physical impairment.

Page 12, A.1 - Add the words "in collaboration with the General Counsel".

D.2. Page 14 - "Directorate Level Senior Resources Boards" seems to refer literally to the four Directorates. Since there are functions performed by these boards that do not appear to be performed by anyone else for members of the DCI area it would be appropriate to create career service senior resources boards, including one for the DCI career Service, or to otherwise see that provision is made for the DCI Career Service.

References to "executives" and "senior officers" - It was intended that all references to "executives" be changed to "senior officers" but that has not been done consistently throughout the draft.

Page 18, paragraph A. - No question was raised at the last Executive Committee meeting about the proposal that supergrade employees be permitted to opt out of the SIS. Upon reflection I would like to raise this as an issue. Is there any reason why we need to follow the SES example in this Agency? The original proposal for mandatory inclusion of all supergrades in SES was changed for political reasons, but it may be worth considering whether such reasons are applicable here. It would be more consistent with a desire for the highest quality senior personnel to require all supergrade employees to compete against each other. There would appear to be no advantage to the Agency in maintaining a separate corps of non-SIS supergrades and it is questionable whether there is any advantage to those supergrades.

Page 46, subparagraph (c) - Our concern that there may be special legal considerations applying to unlimited accrual of annual leave also applies to granting sabbaticals. Add the words "and the sabbatical benefit", after the word benefit in the parenthetical phrase at the end of the subparagraph on annual leave.

Page 65, subparagraph (a) - Disciplinary proceedings would not seem to be a proper matter for consideration by the Performance Review Committee except in cases of adverse actions based upon performance. I suggest adding the words "based upon performance" after the words "disciplinary actions" in subparagraph (a) and adding the words "concerning career development" after the words "grievances" in the language immediately preceding subparagraph (a).

STATINTL



SEP 1 1980

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 540

Merit Pay System

Advance
COPY

Chm ~

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: These regulations implement the provisions of Title V of the Civil Service Reform Act of 1978, which establish a Merit Pay System for supervisors and management officials in positions classified in GS-13, 14, and 15. The Merit Pay System is intended to recognize and reward quality performance by merit pay increases in varying amounts. The Merit Pay System will be fully implemented in October 1981, although agencies may implement the System in whole or in part in October 1980.

DATE: These regulations are effective on [date of publication], although, in accordance with section 540.110 of the regulations, the Merit Pay System will not become operational before October 1980.

FOR FURTHER INFORMATION CONTACT: Barbara Fiss, (202)254-8960.

SUPPLEMENTARY INFORMATION:

The Office of Personnel Management is publishing regulations to supplement and implement the Merit Pay System established by Title V of the Civil Service Reform Act of 1978, Pub. L. 95-454. Proposed regulations were

published in the Federal Register on April 20, 1979 (44 FR 23530-23533). Substantial editorial revisions have been made in the regulations, in order to simplify and clarify them, and a number of substantive changes have also been made.

In addition to the regulations in Part 540, a number of other regulations concerning the Merit Pay System will be added to 5 CFR Chapter I in the future, dealing with the relationship of the Merit Pay System to various other provisions of law and regulation.

Analysis of Comments The proposed regulations provided a 60-day period for public comment. The Office of Personnel Management received comments from 23 agencies, two labor organizations, three employee associations, and six individuals. Most of the comments offered specific recommendations for clarifying or modifying specific provisions of the proposed regulations. As a result, the Office has modified the final regulations, as discussed below. The Office will also supplement the regulations with guidance issued through the Federal Personnel Manual System which will address certain other concerns expressed during the public comment period.

(1) General.

Editorial revisions have been made to section 540.101.

(2) Ranges of basic pay and employee coverage.

Six comments expressed concern over the apparent prohibition on the use of "asterisked rates" and special rate ranges for merit pay employees. These limitations were illustrated with the reference to actual "GM" rates in the proposed regulations. The Office of Personnel Management has determined that the use of "asterisked rates" for merit pay employees in the same manner as they are used for General Schedule employees is legally permissible and consistent with congressional intent. Thus, merit pay employees could receive a "paper" adjustment if their base pay exceeded the Executive Schedule Level V ceiling (currently \$47,500) by virtue of a salary increase due to the granting of the automatic portion of comparability or a merit pay determination. In regard to the special rate ranges, two commenters recommended specifying that special rate ranges are covered under the Merit Pay System. The final regulations in section 540.102 clarify that the Merit Pay System does include special rate ranges for positions covered by special rate authorizations. In relation to this issue, one commenter also recommended that the range of annual rates of basic pay for merit pay employees not be printed in the regulations, but instead, the regulations should clarify that the pay ranges are the same as the corresponding General Schedule grades. This

change was incorporated in section 540.102. Finally, five commenters questioned the legality of using "GM" instead of "GS" as the pay plan code for the Merit Pay System. After restudy of the issue, the Office confirms that the Merit Pay System is a separate pay system and, accordingly, that the use of "GM" as the pay plan code for the Merit Pay System is both legally permissible and necessary for identifying merit pay employees and evaluating the effectiveness of the Merit Pay System and cash award program. Forthcoming guidance in the Federal Personnel Manual will provide additional information on the use of the "GM" pay plan code.

Three commenters requested clarification and expansion of the definitions of supervisor and management official. Since these definitions are contained in law, the Office of Personnel Management cannot alter or expand upon their basic meaning in regulation. However, the Office will continue to publish guidance from time to time to assist agencies in identifying merit pay employees.

One commenter recommended that coverage under the Merit Pay System be reviewed in the agency only in accordance with such procedures as the agency may prescribe, provided that the review is conducted by an official or officials other than the one who made the original coverage determination. Another commenter recommended that an appeal of coverage determinations to the Merit Systems Protection Board be provided. As the Office has indicated in previous guidance (Federal Personnel Manual (FPM) Bulletin 540-1, Attachment 3), the head of each agency has the authority for

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identifying employees who are supervisors or management officials for purposes of coverage under the Merit Pay System. However, section 540.102 has been modified to provide clear authority and responsibility to the head of an agency to identify merit pay employees in GS-13, 14, and 15. In regard to the recommendation for specific regulatory language on agency reviews of Merit Pay System employee coverage, Part 771 of Title 5, Code of Federal Regulations (CFR), Agency Grievance System, allows employees to grieve "any matter of concern or dissatisfaction to an employee which is subject to the control of agency management or any matter in which an employee alleges that coercion, reprisal, or retaliation has been practiced against him or her." Since merit pay employee coverage determinations are not among the items specifically excluded from grievance coverage, employees may grieve coverage or non-coverage under the Merit Pay System within their agency. Therefore, it would be redundant and confusing to provide for similar agency review procedures in the final merit pay regulations. The Office believes that the existing agency administrative grievance system procedures afford employees sufficient recourse in questioning their coverage under or exclusion from the Merit Pay System.

Finally, two commenters suggested that the Office exclude temporary employees, probationary employees and employees on details from the Merit Pay System. Employees on detail to merit pay positions are not included because they do not officially occupy a merit pay position. Merit pay employees on detail to another position continue to be covered by the Merit Pay System. 5 U.S.C. 5401 allows the President to exclude an agency or any unit of an agency from the Merit Pay System, but does

not allow exclusion of individual employees for any reason, including appointment, career status, occupation, etc. Therefore, the suggestions for employee exclusions could not be adopted.

(3) Determination and allocation of merit pay funds.

In the proposed regulations, a standard formula for uniform Government-wide use by all agencies was established as the basis for determining the amount of funds available for merit pay purposes. Five agencies disagreed with the Government-wide approach while one agency supported this approach. A detailed analysis by the Office revealed such variation among agencies in the distribution of employees among step rates, and in the use of quality step increases, that the uniform approach would produce funds in amounts bearing little relationship to what would have been paid out by agencies under the General Schedule step system. As a result, the Office developed a "Merit Pay Fund Computation Table" which agencies will use to determine merit pay funds based on their merit pay employee distribution in each grade. This approach, which is incorporated in section 540.103 of the final regulations, provides the highest degree of equity possible for the establishment of individual agency merit pay funds. The provision in the proposed regulations for a +5 percent variance in each agency's merit pay fund has been retained in section 540.103, in recognition of the difficulty of meeting an absolute monetary requirement, and to permit agencies some flexibility to allocate more or less of the calculated merit pay fund, depending upon the performance of either organizations or individuals.

Two commenters requested that the Office notify agencies as early as possible of the estimate of the amount of merit pay funds. One of these commenters specifically mentioned that there might be practical problems with budgeting for employees who are normally paid from industrial funds. With the use of the "Merit Pay Fund Computation Table" approach, agencies will have sufficient time each year to estimate the portion of the merit pay fund allocations that is attributable to what would have been allocated to within-grade and quality step increases. However, the exact amount of the total comparability adjustment may not be known until near the end of a fiscal year, as under the present General Schedule comparability pay system. Therefore, section 540.103(b) retains the requirement that the Office will provide the needed information before the beginning of each fiscal year.

One commenter noted that there were no provisions in the proposed regulations for operating under continuing resolutions at the beginning of the fiscal year, supplemental appropriations occurring during the year, and rescissions of budget authority in regard to the merit pay funds. The final regulations do not add any such provisions because merit pay funds are not a line item in agency budgets, and funding of the system, for budgeting, appropriation, and expenditure purposes, is the same as the salary funding procedures for General Schedule employees.

Several comments dealt with the computation of the merit pay funds, especially with the effect on the funds of employees positioned at the minimum and maximum of the range of basic pay. The mechanics of determining

Table" and will be thoroughly explained in Federal Personnel Manual guidance. One commenter recommended that agencies distribute merit pay funds among merit pay employees in the three covered grades at their own discretion, rather than account for funds grade-by-grade. The proposed regulations did not provide for funding by grades and therefore no change is needed. Agencies have discretion to determine the procedures for internal distribution of funds, consistent with the provisions of the merit pay regulations. Distribution of funds is a matter for agencies to take into account when developing their merit pay plans.

Five commenters raised questions as to whether or not merit pay funds are limited to each appropriation account. The Office of Personnel Management is consulting with the General Accounting Office to determine whether appropriation lines may be crossed within agencies for purposes of allocating merit pay funds. The final regulations provide for a single merit pay fund in each agency but the regulations may be revised in the future in this regard.

Seven commenters recommended that the final regulations be rewritten to make evaluations of organizational accomplishment for merit pay purposes discretionary, as provided in law. It was not intended to require the consideration of organizational accomplishment, and the final regulations, in sections 540.103 and 540.104, provide that organizational accomplishments may be taken into account if the agency determines it is appropriate to do so. Four commenters recommended that the Office of Personnel Management require agencies to maintain objective documentation to support any

variations in the level of funding provided different organizations. The final regulations incorporate this recommendation in sections 540.103 and 540.104.

(4) Merit pay determinations.

One commenter noted that the 90-day provision for making merit pay determinations and granting any resulting increase could be a very heavy burden on an agency payroll system and instead recommended a maximum of two pay periods for these retroactive provisions. Another commenter recommended that all retroactive funds be paid to employees before the end of the calendar year, that is, by the last agency pay period in December. The Office of Personnel Management notes that the 90-day provision of the proposed regulations was written to provide agencies with the flexibility to make a merit pay determination within a reasonable period before or after the beginning of the fiscal year. In recognition of the problem described, however, the Office has modified the 90-day provision for making merit pay determinations in section 540.104 to no more than 90 days before or 60 days after October 1, and also requires in section 540.105 that all retroactive funds be paid no later than December 31 of the calendar year during which the merit pay increase takes effect. However, the Office cautions that agencies should take into consideration the administrative impact as well as the motivational impact on employees in delaying any merit pay increase.

The final regulations provide that a merit pay determination is to be based on a current performance appraisal, which shall include an appraisal of the employee's performance in meeting affirmative action goals and achieving equal opportunity requirements, to the extent the employee's position involves such responsibilities. One commenter objected to this provision in the proposed regulations, adding it is either superfluous or it will provide a loophole to avoid responsibility in carrying out the full requirements of a supervisory position. However, the original language has been retained in section 540.104, because there are many "management officials" who will be covered by the Merit Pay System, yet have no supervisory responsibilities. It would be unfair to require the consideration of a factor which is not a part of the employee's position.

Three commenters supported the objective documentation of merit pay determinations, one commenter requested clarification of what the Office considered to be objective documentation, and one commenter disagreed with the need for this requirement at all. In section 540.104 of the final regulations, the Office has modified the documentation requirement to include individual merit pay determinations, and organizational accomplishment, where applicable. In the case of individual merit pay determinations, a written performance appraisal, which has been provided to the employee in accordance with section 430.203(g) of the Office of Personnel Management's regulations, and which has had the concurrence of a higher level official as a part of the merit pay determination, is considered appropriate documentation; in the case of organizational

accomplishments, an additional description of the differences of an organization's performance in relation to the performance of other organizations within the agency is considered appropriate documentation.

When the proposed merit pay regulations were written, the Office of Personnel Management's interim performance appraisal regulations and guidance prohibited forced distribution of employee performance ratings. At that time, the Office believed it was clear, by extension, that there was also a prohibition of forced distribution of merit pay determinations and resulting pay adjustments. Since there seemed to be some confusion on this matter during the public comment period, the final regulations in section 540.104 now specifically provide that no merit pay determination may be modified in order to force a specific distribution of performance levels among Merit Pay System employees. In addition, section 540.105 provides that a forced distribution of the dollar or percentage amounts of individual merit pay increases may not be used as a basis for distributing merit pay funds. Intrinsic to the Merit Pay System is the principle that each and every employee is limited in his or her merit pay increase and advancement in the salary range only by his or her performance. Each employee must have an equal chance to be rewarded for effort expended, achievement of objectives, and contribution to the organization. To allow artificial and arbitrary non-performance factors to control the amount of the merit pay increases would, in the Office's opinion, do irreparable harm to the Merit Pay System.

Eight comments were received in regard to the proposed requirement for agency review of merit pay determinations. Five commenters supported the requirement, two opposed it, and one recommended that the requirement be modified to include concurrence by an official at a higher level in the organization than the one who makes the initial merit pay determination.

The last recommendation was incorporated in the final regulations.

After an analysis of the modified provisions, the Office believes that the regulatory requirement for concurrence of merit pay determinations in section 540.104 does not conflict with or go beyond the purview of 5 U.S.C. 5402. The Office notes that each agency retains full authority to establish its own procedures for review; the only requirement is that some concurrence at a higher level be made before the merit pay determination is final. This regulation is based on the general authority in 5 U.S.C. 5405 for the Office of Personnel Management to provide regulations to carry out the purposes of the Merit Pay System. Virtually all existing merit pay plans outside the Federal Government require a before-the-fact merit pay review. That is, some official, other than, and at a higher level than, the one who made the initial merit pay determination, must review and approve the determination before it may become effective. Since Federal supervisors, managers, and management officials will be called upon to make compensation decisions as a new role, the requirement for concurrence is minimal, yet absolutely necessary for the credibility and integrity of the new pay system. Therefore, section 540.104 of the final regulations requires a higher level concurrence in merit pay determinations (except where there is no higher level in the agency).

(5) Merit pay increases

No section of the proposed regulations received more attention than initial merit pay determinations for employees who enter into an established agency merit pay system. It is significant that among the extensive comments received on this matter, none agreed with or supported the Office of Personnel Management's proposal. The most common criticism was lack of a sufficient period to appraise performance before making a merit pay determination. In response to this criticism and in recognition of the probably negligible effect upon most merit pay employees, the Office has eliminated these provisions from the final regulations altogether. It is important to note that in many, if not most instances, employees entering an established agency merit pay system would do so upon promotion. However, in some instances, employees would enter an existing system on the basis of a lateral reassignment. Under the provisions of the final regulations in section 540.105, these employees will be appraised under the normal operation of the Merit Pay System at the same time as the General Schedule pay comparability adjustment. The final regulations do provide in section 540.105, however, that agencies may consider the time since an employee's last increase in pay and the amount of that increase when determining the size of a merit pay increase.

The proposed provisions for merit pay increases have been rewritten for clarity in section 540.105. The final regulations specify that merit pay determinations may take into consideration (1) the employee's grade

level; (2) the employee's relative position in the range of basic pay; and (3) the time since an employee's last increase in basic pay and the amount of that increase. Agencies may use these optional performance-related considerations in their merit pay plans to supplement the use of a current performance appraisal in arriving at merit pay determinations and the amounts (if any) of merit pay increases.

Three commenters agreed with the requirement that the annual merit pay adjustment be effective on the same date as the General Schedule pay comparability adjustment, while two commenters disagreed. The Office has retained the General Schedule pay comparability adjustment date for merit pay determinations in section 540.105, and notes that this method is the only feasible way to comply with the statutory requirement to spend neither more nor less than that which would have been available under the step system.

One commenter requested clarification as to whether or not a merit pay determination includes a determination not to grant an increase. The final regulations in section 540.105 make clear that the decision not to grant an increase is also a merit pay determination.

(6) Interrupted service.

One commenter recommended coverage of employees called to active duty in all of the uniformed services as an extension of the benefit for service with the armed forces under the interrupted service provisions in

5 U.S.C. 5402(d). The Office of Personnel Management views this extension of benefit as legally permissible and that such coverage is equitable and consistent with the intent of the merit pay legislation. Therefore, section 540.106 of the final regulations makes the change.

One commenter recommended the inclusion of employees on Intergovernmental Personnel Act (IPA) mobility assignments covered by subchapter VI of chapter 33 of title 5, United States Code, under the interrupted service benefits of the Merit Pay System. This provision would be consistent with the provisions of 5 U.S.C. 3373. Therefore, Part 334 of title 5, Code of Federal Regulations, will be revised to include such a provision in the regulations dealing with mobility assignments.

One commenter disagreed with the proposed regulations for granting employees with interrupted service the average merit pay adjustment that occurred in their absence. Another asked what guidance will be used for determining the average increase for employees returning from interrupted service. In response to these comments, the final regulations in section 540.106 provide that employees may receive the benefit of average adjustments for employees comparably situated under the Merit Pay System in the agency during the period when the employee's service was interrupted. Thus, agencies are not constrained to a strict average of funds but could take into consideration the grade level of the employee, the employee's relative position in the rate range of basic pay and the period of time since the employee's last equivalent increase in basic pay.

(7) Cash award program.

The final regulations in section 540.107 on the cash award program have been revised to clarify the relationship between the merit pay cash award program established under 5 U.S.C. 5403 and the incentive award program established under chapter 45 of title 5, United States Code. Agencies are not expected to administer two separate yet essentially duplicate programs. Instead, agencies must submit to the Office of Personnel Management for approval, as a part of their merit pay plans that portion of the cash award program for merit pay employees that is performance-related. All other non-performance-related aspects of the cash award program must be administered in accordance with the provisions of Part 451 of the Code of Federal Regulations, although the statutory authority of any such cash award provision remains based on 5 U.S.C. 5403. 5 CFR Part 451 will be revised to incorporate these changes.

One commenter recommended that the Office add detailed guidance on the cash award program to the final regulations. The Office will publish Federal Personnel Manual guidance from time to time on the cash award program.

The proposed regulations required agencies to provide documentation of the reasons for cash awards to recipients of cash awards. This requirement has been removed from the final regulations in recognition that in

many instances it would be impractical and unnecessary to provide employees with the actual detailed documentation of a cash award. Instead, procedures for documentation are a matter of agency discretion. The Office expects, however, that a letter of commendation or some other written communication will accompany each cash award.

(8) Agency plans for the Merit Pay System.

In the proposed regulations, each agency was required to establish and furnish the Office of Personnel Management with a copy of its merit pay plan. Three commenters recommended that the Office provide criteria or additional information for merit pay plans. The Office has given further consideration to its responsibilities and relationship to the agencies under the Merit Pay System and the nature and scope of agency merit pay plans. The Office concluded that the requirement for agencies to submit merit pay plans for approval is needed. The requirement for review of agency performance appraisal systems by the Office of Personnel Management exists in law, and the Office believes that the controversial nature of merit pay and its lack of precedent in the Federal personnel system make it imperative that reasonable quality control be exercised over the proposed programs, while at the same time agencies be given as much flexibility as possible in plan design. Therefore, the Office specifies the minimal criteria for merit pay plans in the final regulations and also requires, in section 540.108, that plans be submitted at least 180 days before they are scheduled to become effective. The Office notes that under the provisions of section 540.108, April 1, 1981, will be the latest date that agencies can submit their merit pay plans for approval.

(9) Reports.

There are no substantial changes to the provisions on reports in section 540.109 of the final regulations.

(10) Implementation.

The proposed regulations provided for early implementation of the Merit Pay System for a group or category of employees in October 1979 or 1980. However, due to (1) the publication of the final merit pay regulations so close to the October 1979 pay adjustment and (2) the fact that agencies are not prepared to implement the pay provisions of the Merit Pay System in October 1979 (based on information provided by the agencies in a questionnaire distributed at the Interagency Advisory Group Committee on Merit Pay), the provision for early implementation in October 1979 has been removed from section 540.110 of the final regulations.

Text of Law

For the use of readers in understanding the regulations, the text of the relevant laws is set forth below:

(1) The principal statutory provisions concerning the Merit Pay System appear in chapter 54 of title 5, United States Code, the text of which follows:

"CHAPTER 54—MERIT PAY AND CASH AWARDS

"Sec.

"5401. Purpose.
"5402. Merit pay system.
"5403. Cash award program.
"5404. Report.
"5405. Regulations.

"§ 5401. Purpose

"(a) It is the purpose of this chapter to provide for—
"(1) a merit pay system which shall—
 "(A) within available funds, recognize and reward quality performance by varying merit pay adjustments;
 "(B) use performance appraisals as the basis for determining merit pay adjustments;
 "(C) within available funds, provide for training to improve objectivity and fairness in the evaluation of performance; and
 "(D) regulate the costs of merit pay by establishing appropriate control techniques; and

"(2) a cash award program which shall provide cash awards for superior accomplishment and special service.

"(b)(1) Except as provided in paragraph (2) of this subsection, this chapter shall apply to any supervisor or management official (as defined in paragraphs (10) and (11) of section 7103 of this title, respectively) who is in a position which is in GS-18, 14, or 15 of the General Schedule described in section 5104 of this title.

"(2)(A) Upon application under subparagraph (C) of this paragraph, the President may, in writing, exclude an agency or any unit of an agency from the application of this chapter if the President considers such exclusion to be required as a result of conditions arising from—

 "(i) the recent establishment of the agency or unit, or the implementation of a new program,
 "(ii) an emergency situation, or
 "(iii) any other situation or circumstance.

"(B) Any exclusion under this paragraph shall not take effect earlier than 30 calendar days after the President transmits to each House of the Congress a report describing the agency or unit to be excluded and the reasons therefor.

"(C) An application for exclusion under this paragraph of an agency or any unit of an agency shall be filed by the head of the agency with the Office of Personnel Management, and shall set forth reasons why the agency or unit should be excluded from this chapter. The Office shall review the application and reasons, undertake such other review as it considers appropriate to determine whether the agency or unit should be excluded from the coverage of this chapter, and upon completion of its review, recommend to the President whether the agency or unit should be so excluded.

"(D) Any agency or unit which is excluded pursuant to this paragraph shall, insofar as practicable, make a sustained effort to eliminate the conditions on which the exclusion is based.

"(E) The Office shall periodically review any exclusion from coverage and may at any time recommend to the President that an exclusion under this paragraph be revoked. The President may at any time revoke, in writing, any exclusion under this paragraph.

§ 5402. Merit pay system

"(a) In accordance with the purpose set forth in section 5401(a)(1) of this title, the Office of Personnel Management shall establish a merit pay system which shall provide for a range of basic pay for each grade to which the system applies, which range shall be limited by the minimum and maximum rates of basic pay payable for each grade under chapter 53 of this title.

"(b) (1) Under regulations prescribed by the Office, the head of each agency may provide for increases within the range of basic pay for any employee covered by the merit pay system.

"(2) Determinations to provide pay increases under this subsection—

"(A) may take into account individual performance and organizational accomplishment, and

"(B) shall be based on factors such as—

"(i) any improvement in efficiency, productivity, and quality of work or service, including any significant reduction in paperwork;

"(ii) cost efficiency;

"(iii) timeliness of performance; and

"(iv) other indications of the effectiveness, productivity, and quality of performance of the employees for whom the employee is responsible;

"(C) shall be subject to review only in accordance with and to the extent provided by procedures established by the head of the agency; and

"(D) shall be made in accordance with regulations issued by the Office which relate to the distribution of increases authorized under this subsection.

"(3) For any fiscal year, the head of any agency may exercise authority under paragraph (1) of this subsection only to the extent of the funds available for the purpose of this subsection.

"(4) The funds available for the purpose of this subsection to the head of any agency for any fiscal year shall be determined before the beginning of the fiscal year by the Office on the basis of the amount estimated by the Office to be necessary to reflect—

"(A) within-grade step increases and quality step increases which would have been paid under subchapter III of chapter 53 of this title during the fiscal year to the employees of the agency covered by the merit pay system if the employees were not so covered; and

"(B) adjustments under section 5305 of this title which would have been paid under such subchapter during the fiscal year to such employees if the employees were not so covered, less an amount reflecting the adjustment under subsection (c)(1) of this section in rates of basic pay payable to the employees for the fiscal year.

"(c) (1) Effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5305 of this title, the rate of basic pay for any position under this chapter shall be adjusted by an amount equal to the greater of—

- "(A) one-half of the percentage of the adjustment in the annual rate of pay which corresponds to the percentage generally applicable to positions not covered by the merit pay system in the same grade as the position; or
 - "(B) such greater amount of such percentage of such adjustment in the annual rate of pay as may be determined by the Office.
- "(2) Any employee whose position is brought under the merit pay system shall, so long as the employee continues to occupy the position, be entitled to receive basic pay at a rate of basic pay not less than the rate the employee was receiving when the position was brought under the merit pay system, plus any subsequent adjustment under paragraph (1) of this subsection.

"(3) No employee to whom this chapter applies may be paid less than the minimum rate of basic pay of the grade of the employee's position.

"(d) Under regulations prescribed by the Office, the benefit of advancement through the range of basic pay for a grade shall be preserved for any employee covered by the merit pay system whose continuous service is interrupted in the public interest by service with the armed forces, or by service in essential non-Government civilian employment during a period of war or national emergency.

"(e) For the purpose of section 5941 of this title, rates of basic pay of employees covered by the merit pay system shall be considered rates of basic pay fixed by statute.

§ 5403. Cash award program

"(a) The head of any agency may pay a cash award to, and incur necessary expenses for the honorary recognition of, any employee covered by the merit pay system who—

"(1) by the employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

"(2) performs a special act or service in the public interest in connection with or related to the employee's Federal employment.

"(b) The President may pay a cash award to, and incur necessary expenses for the honorary recognition of, any employee covered by the merit pay system who—

"(1) by the employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

"(2) performs an exceptionally meritorious special act or service in the public interest in connection with or related to the employee's Federal employment.

A Presidential cash award may be in addition to an agency cash award under subsection (a) of this section.

"(c) A cash award to any employee under this section is in addition to the basic pay of the employee under section 5402 of this title. Acceptance of a cash award under this section constitutes an agreement that the use by the Government of any idea, method, or device for which the award is made does not form the basis of any claim of any nature against the Government by the employee accepting the award, or the employee's heirs or assigns.

"(d) A cash award to, and expenses for the honorary recognition of, any employee covered by the merit pay system may be paid from the fund or appropriation available to the activity primarily benefiting, or the various activities benefiting, from the suggestion, invention, superior accomplishment, or other meritorious effort of the employee. The head of the agency concerned shall determine the amount to be contributed by each activity to any agency cash award under subsection (a) of this section. The President shall determine the amount to be contributed by each activity to a Presidential award under subsection (b) of this section.

"(e) (1) Except as provided in paragraph (2) of this subsection, a cash award under this section may not exceed \$10,000.

"(2) If the head of an agency certifies to the Office of Personnel Management that the suggestion, invention, superior accomplishment, or other meritorious effort of an employee for which a cash award is proposed is highly exceptional and unusually outstanding, a cash award in excess of \$10,000 but not in excess of \$25,000 may be awarded to the employee on the approval of the Office.

"(f) The President or the head of an agency may pay a cash award under this section notwithstanding the death or separation from the service of an employee, if the suggestion, invention, superior accomplishment, or other meritorious effort of the employee for which the award is proposed was made or performed while the employee was covered by the merit pay system.

§ 5404. Report

The Office of Personnel Management shall include in each annual report required by section 1303(a) of this title a report on the operation of the merit pay system and the cash award program established under this chapter. The report shall include—

"(1) an analysis of the cost and effectiveness of the merit pay system and the cash award program; and

"(2) a statement of the agencies and units excluded from the coverage of this chapter under section 5401(b)(2) of this title, the reasons for which each exclusion was made, and whether the exclusion continues to be warranted.

§ 5405. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this chapter."

(2) Under 5 U.S.C. 5401(b)(1), the Merit Pay System applies to those employees in positions classified in GS-13, 14, or 15 who are "supervisors" or "management officials," as those terms are defined in paragraphs (10) and (11) of 5 U.S.C. 7103. The text of paragraphs (10) and (11) follows:

"(10) 'supervisor' means an individual employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term 'supervisor' includes only those individuals who devote a preponderance of their employment time to exercising such authority;

"(11) 'management official' means an individual employed by an agency in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the agency;"

(3) Section 504 of Pub. L. 95-454 contains certain special provisions relating to the initial implementation of the Merit Pay System. The text of section 504 follows:

"SEC. 504. (a) The provisions of this title shall take effect on the first day of the first applicable pay period which begins on or after October 1, 1981, except that such provisions may take effect with respect to any category or categories of positions before such day to the extent prescribed by the Director of the Office of Personnel Management.

(b) The Director of the Office of Personnel Management shall include in the first report required under section 5404 of title 5, United States Code (as added by this title), information with respect to the progress and cost of the implementation of the merit pay system and the cash award program established under chapter 54 of such title (as added by this title)."

Accordingly, the Office of Personnel Management is adding to Chapter I of Title 5 of the Code of Federal Regulations a new Part 540, as set forth below:

PART 540--MERIT PAY SYSTEM

sec.

- 540.101 General.
- 540.102 Ranges of basic pay and employee coverage.
- 540.103 Determination and allocation of merit pay funds.
- 540.104 Merit pay determinations.
- 540.105 Merit pay increases.
- 540.106 Interrupted service.
- 540.107 Cash award program.
- 540.108 Agency plans for Merit Pay System.
- 540.109 Reports.
- 540.110 Implementation.

AUTHORITY: 5 U.S.C. 5401-5405; Pub. L. 95-454, § 504.

§ 540.101 General.

Chapter 54 of title 5, United States Code (5 U.S.C. 5401-5405), provides for a Merit Pay System to recognize and reward quality performance by supervisors and management officials (as defined in 5 U.S.C. 7103(10)-(11)) in positions classified in GS-13, 14, or 15. This part contains the regulations which the Office of Personnel Management has prescribed for the Merit Pay System. This part supplements and implements the provisions of 5 U.S.C. 5401-5405, and section 504 of Pub. L. 95-454 (concerning the implementation of the Merit Pay System), and must be read together with those provisions of law.

§ 540.102 Ranges of basic pay and employee coverage.

(a) Under 5 U.S.C. 5402(a), the Office of Personnel Management is required to establish a Merit Pay System which provides a range of basic pay for each grade of the Merit Pay System. The Merit Pay System shall consist of three grades, as follows:

(1) GM-13, which shall consist of supervisors and management officials who are in positions classified in GS-13;

(2) GM-14, which shall consist of supervisors and management officials who are in positions classified in GS-14; and

(3) GM-15, which shall consist of supervisors and management officials who are in positions classified in GS-15.

(b) The range of annual rates of basic pay for each grade of the Merit Pay System shall be the same as the range of annual rates of basic pay for the corresponding grade of the General Schedule, including any rates authorized under 5 U.S.C. 5303 for any position covered by such authorization.

(c) The head of each agency shall identify employees who are supervisors or management officials for purposes of coverage by the Merit Pay System.

§ 540.103 Determination and allocation of merit pay funds.

(a) Under 5 U.S.C. 5402(b)(4), the Office of Personnel Management must determine the funds available for merit pay purposes. In order to allow the Office to do this, each agency covered by the Merit Pay System shall submit such data as the Office may require.

(b) Before the beginning of each fiscal year, the Office of Personnel Management shall issue a Merit Pay Fund Computation Table, together with instructions for its use. Each agency covered by the Merit Pay System shall use this table to determine the amount of the merit pay fund available to the agency.

(c) Each agency covered by the Merit Pay System is required to establish procedures to ensure that the merit pay fund in the agency is allocated in a fair and objective manner. Variations in the level of merit pay funding provided different organizational elements in the agency must be based solely on differences in the Merit Pay System payroll for the different organizational elements, unless the agency determines that variations should also be based on differences in organizational accomplishments of the different elements. If differences in organizational accomplishments are to be taken into consideration, those differences must be determined on the basis of a fair and objective assessment of each organization's performance in relation to that of other organizations within the agency, and the basis for the determination must be fully documented.

(d) Each agency covered by the Merit Pay System is required to establish procedures to ensure that the sum of merit pay increases awarded each year under section 540.105 of this part to Merit Pay System employees in the agency is no less than 95 percent and no more than 105 percent of the agency's merit pay fund (unless the Office of Personnel Management has granted prior approval for a lesser or greater obligation).

§ 540.104 Merit pay determinations.

(a) A merit pay determination is to be made for each employee covered by the Merit Pay System on October 1 of each year, or on the closest date before or after October 1 that is determined by the agency to be administratively feasible (but in no event more than 90 days before or 60 days after October 1).

(b) Each merit pay determination is to be based on a current performance appraisal (which shall include an appraisal of the employee's performance in meeting affirmative action goals and achieving equal employment opportunity requirements, to the extent the employee's position involves such responsibilities). Except in the case of agencies or employees not covered under chapter 43 of title 5, United States Code, performance appraisals are to be made under a performance appraisal system that has been approved by the Office of Personnel Management under 5 U.S.C. 4304(b)(1).

(c) If the agency determines it is appropriate to do so, a merit pay determination may also take into consideration the accomplishments of the organizational element within which the employee is employed. If organizational accomplishments are taken into consideration, the accomplishments of the organizational element must be determined on the basis of a fair and objective assessment of that organization's performance in relation to that of other organizations within the agency, as documented under section 540.103(c) of this part.

(d) No merit pay determination may take into consideration any preestablished or forced distribution of levels of performance among Merit Pay System employees.

(e) Agency procedures for making merit pay determinations must include a requirement for a concurrence in each merit pay determination by an official of the agency who is at a higher level than the official who made the merit pay determination (unless there is no official at a higher level in the agency).

(f) The reasons for each merit pay determination are to be documented and shall be made available to the affected employee at his or her request.

(g) No merit pay increase resulting from a merit pay determination may be put into effect until the requirements of this section have been met.

S 540.105 Merit pay increases.

(a) Each agency shall establish a procedure for determining in a fair and objective manner the amount of merit pay increase that shall be granted each Merit Pay System employee. The amount of merit pay increase (if any) for each Merit Pay System employee each fiscal year shall be based on the merit pay determination made with respect to October 1 of that fiscal year under section 540.104 of this part, but may also take into consideration the grade level of the employee, the position of the employee's existing rate of basic pay within the range of basic pay for the employee's grade, the period of time since the employee's last increase in rate of basic pay (other than an increase under 5 U.S.C. 5303, 5305, 5307, 5343(a), 5363(a)(B), or 5402(c)(1)), and the amount of such last increase in rate of basic pay. The amount of merit pay increase for each Merit Pay System employee may not take into consideration any preestablished or forced distribution of dollar or percentage amounts of individual merit pay increases.

(b) All merit pay increases each fiscal year shall be made effective on the same day the pay adjustment under 5 U.S.C. 5402(c)(1) becomes effective in that fiscal year. If, under section 540.104(a) of this part, a merit pay determination is not made until after a pay adjustment under 5 U.S.C. 5402(c)(1) becomes effective, the resulting merit pay

increase (if any) shall be made retroactive to the effective date of the pay adjustment under 5 U.S.C. 5402(c)(1). In no event shall the retroactive payment be made later than December 31 of the calendar year during which such pay adjustment takes effect.

(c) A Merit Pay System employee's rate of basic pay may not be less than the minimum nor more than the maximum rate of basic pay for the employee's grade in the Merit Pay System. Notwithstanding any merit pay determination--

(1) Each Merit Pay System employee's rate of basic pay must be increased, effective on the same day a pay adjustment under 5 U.S.C. 5402(c)(1) becomes effective, by any amount necessary to raise the employee's rate of basic pay to the new minimum rate for the employee's grade; and

(2) No Merit Pay System employee's rate of basic pay may be increased by an amount that would cause that rate of basic pay to exceed the maximum rate for the employee's grade.

§ 540.106 Interrupted service.

(a) An employee covered by the Merit Pay System, whose continuous service is interrupted in the public interest by service with the uniformed services or by service in essential non-Government civilian employment during a period of war or national emergency, is entitled to have his or her pay fixed in accordance with this section upon:

(1) Reemployment in a position under the Merit Pay System not later than 52 calendar weeks after separation from active duty in the uniformed services;

- (2) Restoration to a position under the Merit Pay System after separation from active duty in the uniformed services (or hospitalization continuing thereafter) as provided by law; or
- (3) Reemployment in or restoration to a position under the Merit Pay System without a break in service after service in essential non-Government civilian employment during a period of war or national emergency.
- (b) An employee under the Merit Pay System who is entitled to have his or her pay fixed under this section shall have his or her pay fixed within the range of basic pay for the employee's position at a rate which is the lesser of--
- (1) The maximum rate of the range of basic pay, or
- (2) The sum of--
- (i) The employee's rate of basic pay under the Merit Pay System immediately before the interruption of service entitling the employee to coverage under this section;
- (ii) The adjustments that would have been made in the employee's rate of basic pay under 5 U.S.C. 5402(c)(1) had the employee's service not been interrupted; and
- (iii) The average adjustments under 5 U.S.C. 5402(b) that were received by comparably situated employees under the Merit Pay System in the agency during the period when the employee's service was interrupted.

S 540.107 Cash award program.

(a) 5 U.S.C. 5403 authorizes a cash award program as part of the Merit Pay System. Each agency covered by the Merit Pay System shall establish a cash award program for its Merit Pay System employees in accordance with the provisions of 5 U.S.C. 5403 and this section.

(b) Each agency's cash award program shall provide for the administration of cash awards for Merit Pay System employees, except as provided in paragraph (c) of this section, as a part of and in conjunction with the Merit Pay System, and shall establish procedures to ensure that:

- (1) Cash awards are made in a fair and objective manner; and
- (2) The reasons for each award are documented in such manner as the agency may prescribe.

(c) Cash awards that are not related to the Merit Pay System employee's performance in his or her position are to be administered in accordance with the provisions of Part 451 of this chapter and the agency's incentive award program established pursuant to Part 451.

(d) The Office of Personnel Management shall establish and publish in the Federal Personnel Manual procedures for considering agency certifications for cash awards under 5 U.S.C. 5403(e)(2).

S 540.108 Agency ~~P~~lans for Merit Pay System.

(a) Each agency with employees who are subject to the Merit Pay System shall establish a plan for administering the Merit Pay System within that agency. Each agency's plan shall be consistent with the

provisions of 5 U.S.C. 5401-5403 and this part, and shall include, in addition to provisions to carry out the requirements of sections 540.103, 540.104, 540.105, and 540.107 of this part, provisions for--

(1) Communication to the agency's Merit Pay System employees of the purpose of the Merit Pay System and how it works; and

(2) Training in the operation of the Merit Pay System for employees who are subject to that System and for employees who are responsible for its operation.

(b) Each plan for administering the Merit Pay System (and each subsequent change in that plan) shall be submitted to the Office of Personnel Management not less than 180 days before the plan (or change in the plan) is scheduled to become effective. The Office shall advise the agency within 90 days of receipt of the plan (or change in the plan) whether the plan (or change in the plan) is approved. The agency may not implement the plan (or change in the plan) unless it has been approved by the Office.

§ 540.109 Reports.

Under 5 U.S.C. 5404, the Office of Personnel Management is required to include in its annual report to the President under 5 U.S.C. 1308 a report on the operation of the Merit Pay System and the cash award program established under chapter 54 of title 5, United States Code, and the provisions of this part. In order to provide information needed for this report, each agency shall maintain such records and submit to the Office such reports as the Office may require.

S 540.110 Implementation.

(a) Except as provided in paragraph (b) of this section, the Merit Pay System shall be effective on October 1, 1981, and a merit pay determination shall be made for each Merit Pay System employee on that date, or on the closest date before or after that date that is determined by the agency to be administratively feasible (but in no event more than 90 days before or 60 days after October 1, 1981).

(b) An agency may implement the Merit Pay System for any group or category of supervisors or management officials in positions classified in GS-13, 14, or 15 on October 1, 1980, provided that the agency advises the Office of Personnel Management of such implementation not later than March 31, 1980.

OFFICE OF PERSONNEL MANAGEMENT

Beverly M. Jones

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Issuance System Manager

SEP 4 1979

6325-01

Should the Agency's SPS positions and incumbents be included in the new Senior Executive Service (SIS)?

There are virtually no advantages to retaining the existing SPS category as an alternative to incorporating the Agency's SPS ceiling into the new SIS ceiling and inviting all SPS officers to join the SIS.

The argument that SPS officers would lose their unique status may be partially true at least on the surface, but in fact this need not be so. The special skills required for certain positions now within the SPS category would still be needed and would be recognized and dealt with accordingly, as in the past, by the concerned offices. The only difference would be that the SPS officer concerned would be assigned to one of the six SIS levels rather than to one of the nine SPS steps. Career development and progression, as at present, would depend on concerned career services.

The principal disadvantage to SPS officers in retaining the existing SPS category is financial.

- o Currently, the salary of all SPS officers (as well as GS and EP-V officers) is limited to \$47,500. As a result, all SPS officers in steps 3 through 9 are at the same pay rate (i.e., \$47,500). If the separate SPS category is retained, SPS officers will be eligible for an increase in compensation only if the \$47,500 ceiling is increased by the Congress.

- o Conversely, if the SPS category is not retained and SPS positions and incumbents are included in the new SIS, former SPS officers will be eligible for (a) performance awards of up to 20 percent of their base pay and (b) for meritorious and distinguished executive ranks (\$10,000 and \$20,000 respectively).
- o Any statutory increase in the existing pay ceiling of \$47,500 would, at the discretion of the DCI, apply ~~both~~^{not only} ~~but also~~ officers to the Agency's SIS officers.

The disadvantage to the Agency of retaining the SPS category relates to ceiling and to the number of performance awards which can be approved--not to mention the problem (or inconvenience) of maintaining what would seem to be an unnecessary separate pay category.

- o The OMB-imposed Agency SPS ceiling is █, but (as of 31 July 1979) only █ positions are so classified and only █ SPS officers are on duty. STATINTL
- o If the SPS ceiling (along with the SG and EP-V/IV ceiling) is included in the new SIS, the Agency SIS ceiling will be █ if the SPS ceiling is excluded, the SIS ceiling will be █ less, or █ Corresponding incumbents (as of 31 July 1979) would be █ respectively; SIS STATINTL
- STATINTL
- STATINTL
- STATINTL
- STATINTL

ceiling flexibility (i.e., "vacancies") would be [REDACTED] STATINTL respectively.

- STATINTL
- o Since performance awards are limited to 50 percent of SIS ceiling positions, [REDACTED] such awards would be possible with no SPS category, and [REDACTED] if the SPS category is retained. STATINTL Thus, the number of performance awards would be 21 greater if the existing SPS ceiling is included in the SIS ceiling, and in such case former SPS officers would be eligible for performance awards.

SIS

Sept. 79

SENIOR INTELLIGENCE SERVICE - Option II, Page 22

Implementation of CIA SIS with number of SIS positions to be established by current authorized SG, SPS, EP-V and EP-IV ceiling.

PROS:

1. Simpler accounting [REDACTED]
2. Avoid confusion now existing between ceiling and positions.

STATINTL

CONS:

1. Would require a misclassification of approximately 26 positions. (System used today would be corrupted. Possible OMB question of misclassification. Subject to possible criticism. Impact on incumbent.)
2. Put indisarray jobs underneath the misclassified position. Distorts pecking order.
3. Takes away status now enjoyed by GS-15's in these 26 positions.
4. Makes less attractive cross-fertilization of GS-14's.
5. Possible promotion of less qualified.
6. Creates unnecessary PRA's.
7. Fact have more positions than allowances has been used to defend against excess allowances. Been used in defending SG allowances with HAC who impressed with our classification.

What would be the savings in establishing Class A performance at 15%, Class B at 8% and Class C at 5%?

STATINTL

Answer: Based on the 50% of [REDACTED] ceiling, it would be a savings of \$379,050.

STATINTL

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